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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 844

BAKERY SALES DRIVERS LOCAL UNION NO. 344 (A. F. of L.), AUTO TRUCK DRIVERS JOINT COUNCIL NO. 50 (A. F. of L.), ELMER JOHNSON, JOSEPH REICHARTZ, GILBERT SCHLECHTA and G. McMICKEN,

Petitioners,

vs.

CARPENTER BAKING COMPANY, a Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

and

BRIEF IN SUPPORT THEREOF.

JOSEPH A. PADWAY and
A. G. GOLDBERG,
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ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

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SUPREME COURT OF THE UNITED STATES.

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BAKERY SALES DRIVERS LOCAL UNION NO. 344 (A. F. of L.), AUTO TRUCK DRIVERS JOINT COUNCIL NO. 50 (A. F. of L.), ELMER JOHNSON, JOSEPH REICHARTZ, GILBERT SCHLECHTA and G. McMICKEN,

Petitioners,

vs.

CARPENTER BAKING COMPANY, a Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

The above named petitioners respectfully petition for a writ of certiorari to review a decision of the Supreme Court of the State of Wisconsin, 238 Wis. 367, 299 N. W. 30, rendered June 25, 1941, motion for rehearing denied October 7, 1941 (300 N. W. 225), affirming a judgment of the Circuit Court for Milwaukee County, Wisconsin, enjoining and restraining your petitioners from engaging in certain activities. (The principal decision and the decision on rehearing are set forth as Appendix A of petitioners' brief, attached to this petition at page 59).

SUMMARY STATEMENT OF MATTER INVOLVED.

[References to the record are references to the pages of the printed case, filed in lieu of the record under rule 38(7) of the United States Supreme Court.]

Bakery Sales Drivers Local Union No. 344 (A. F. of L.) and Auto Truck Drivers Joint Council No. 50 (A. F. of L.) are voluntary unincorporated associations, known as labor unions. The individually named petitioners are members and officers of the aforesaid organizations (R. 25).

The Carpenter Baking Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, duly licensed to transact business in the State of Wisconsin, and is engaged in the manufacture, sale and distribution of bread and other bakery products in the City of Milwaukee, Wisconsin (R. 24).

Bakery Sales Drivers Local Union No. 344 (hereinafter called the union) had attempted to organize the bakery sales drivers of the Carpenter Baking Company (hereinafter called the company) since 1933 (R. 35).

In November, 1934, the organization had secured all-union agreements with two of the major bakeries in the Milwaukee area, and by 1938 had such agreements with all major bakeries with the exception of the Carpenter Baking Company. These agreements corrected such evils as Sunday work, work from early morning until late afternoon, no vacations with pay, and no guaranteed or base wage, and conferred other benefits as well (R. 51, 52).

In 1934 the bakery sales drivers of the Carpenter Baking Company organized a so-called union known as Brotherhood of Bakery Sales Drivers Local No. 1 (hereinafter called the Independent), all of the employees becoming members of such organization. In 1936 a check-off system was arranged between the Independent and the

company whereby a dollar per month was deducted from the wage of the employees and paid to the treasurer of the Independent (R. 35).

In 1938 the Independent and the Carpenter Company entered into a labor agreement for the year 1938, expiring on December 31, 1938, covering hours, wages and working conditions. During the year 1940 there was no contract of any kind existing between the Independent and the company (R. 36).

From 1938 on many meetings were held between representatives of the company and representatives of the petitioning unions in an effort to agree upon the terms of a contract (R. 36-40). A contract submitted at that time contained an all-union agreement, which was valid under the then existing laws. (**United Shoe Workers etc. v. Wisconsin Labor Relations Board**, 227 Wis. 569, 279 N. W. 37; **American Furniture Co. v. I. B. of T. C. S. & H.** [Wis.], 222 Wis. 338, 268 N. W. 250.) Upon the refusal of the company to sign such agreement, and after due notice to the company, as requested by its officials, the union, Local 344, in January, 1939, placed pickets at the plant (R. 40).

These activities were temporarily suspended for several days while the Wisconsin State Labor Board sought to conciliate the matter, but were resumed after the employees of the Carpenter Company voted against affiliation with Local 344 (R. 40, 41).

On January 23, 1939, the company ceased operations, and did not resume such operations until after the passage of Chapter 25, Laws of 1939, limiting the definition of labor dispute to disputes between an employer and a majority of his employees. The company paid the wages of the employees during this period of the shutdown (R. 41).

In June, 1939, the unions filed charges with the National Labor Relations Board against the Carpenter Baking Com-

pany, alleging violation of the National Labor Relations Act. The Trial Examiner appointed by the Board to take testimony upon the complaint issued by the Board filed an intermediate report on August 17, 1940, finding that the company had engaged in unfair labor practices under the National Act (R. 43).

From April 4, 1939, until August 12, 1940, Local 344 continued its efforts to unionize the bakery sales drivers by the individual solicitation of such sales drivers on numerous occasions. At least two meetings were called by Local 344, which were attended by some of the sales drivers employed by the company (R. 43).

At a regular meeting held on April 9, 1940, Local 344 granted to the executive board of the union the authority to advertise the nonunion status of the Carpenter sales drivers (R. 45, 46). At a special meeting held on July 23, 1940, the members voted to pay an additional dollar per month as dues "during the controversy with the M. Carpenter Baking Company sales drivers" (R. 46).

On August 12, 1940, Local 344 commenced the following activities:

The delivery trucks of the company were followed by automobiles driven by members of Local 344, accompanied by another man wearing a canvas apron suspended from the shoulders and visible from both the front and the rear, containing the following words:

> "This Carpenter Baking Co. employe is not a member of Bakery Sales Drivers Union Local 344. Please do not patronize."

The bakery truck was followed from one customer's place to another. As the truck would stop to make a delivery the union representative wearing the sign walked back and forth alongside the truck. In those cases where the truck was not parked immediately in front of the

customer's place of business the sign bearer walked to the front of such place of business while the Carpenter Baking Company employee was inside (R. 46, 47).

The other union representative entered the place of business and informed the proprietor or manager that the Carpenter sales driver was not a member of Local 344, and requested such person to co-operate with the union, either by refusing to purchase or by limiting the purchase of bakery goods offered for sale by the Carpenter Baking Company employees (R. 47). Sales drivers are paid in part on a commission basis (R. 53).

After the commencement of the picketing activities the Carpenter Baking Company supplied an additional man to accompany each sales driver who was followed by a union representative, such helper remaining in the truck while the sales driver made the delivery (R. 47).

The number of automobiles engaged in such activities on behalf of the union varied from two to six, but only one auto followed each truck (R. 48).

There has been no violence since the commencement of the activities on August 12, 1940 (R. 53).

At the time of the commencement of the action eight employees of the Carpenter Baking Company were members of Local 344 (R. 73).

The union members engaging in the picketing activities have been instructed to be courteous at all times, never to follow the trucks too closely, and to obey all traffic signals (R. 60, 65, 86). When following a truck the automobile would either park across the street, or if there was sufficient room would park in front or behind the Carpenter truck (R. 60, 61).

Statements were made to the public only in response to questions asked of the person carrying the sign, and in

those cases the only statement made was that the particular employee was not a member of the union (R. 61, 64, 65).

While the union would like to secure an all-union agreement from the Carpenter Baking Company, the immediate objective of the union, in view of the present state labor laws, is to secure the required three-fourths approval of the employees as is provided by law [111.06 (c), Wis. Stats. 1939] prior to asking for such agreement (R. 69), and to secure patronage for union men (R. 71, 72). No members of the union employed by the company were followed or picketed (R. 72).

PROCEEDINGS IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY.

On the 15th day of August, 1940, the company brought an action in equity in the Circuit Court for Milwaukee County, seeking temporary and permanent relief restraining the petitioners from following and picketing the company's employees and delivery trucks, from inciting and persuading persons not to deal with the company or with retail dealers offering the company's products for sale, and from in any way representing that there was a labor dispute existing between the company and the employees, or otherwise molesting or interfering with the plaintiff in its business (R. 12, 13).

The complaint alleged that the employees of the company engaged in the sale and delivery of the company's bakery products have refused to designate the union as their collective bargaining representative, and that no labor dispute existed between the company and its employees, but that such relationship between the company and its employees had been harmonious at all times (R. 3, 4).

It was further alleged that the unions had entered into

a conspiracy, contrary to the provisions of Section 343.681 of the Wisconsin Statutes, to injure the company's trade and business for the purpose of compelling the company to influence, coerce and force its said employees to designate the unions as their collective bargaining representative, and for the purpose of willfully and maliciously injuring the company in its trade and business, and that in furtherance of such conspiracy the unions have sought to intimidate the company's employees and have engaged in a secondary boycott within the meaning of Section 111.02 (12) of the Statutes (R. 4, 5).

It was further alleged that the specific acts committed in furtherance of the conspiracy consisted of following the delivery trucks of the company, seeking to persuade the company's customers to discontinue purchasing the bakery products from the company, falsely intimating that there was labor trouble at the company's plant, and picketing the company's trucks and its customers, accompanied by the carrying of signs stating that the Carpenter Baking Company employee was not a member of the Bakery Sales Drivers' Union No. 344 (R. 4, 5, 6).

The petitioners in their answer alleged that the company, in its relationships and dealings with the employees of the company, has engaged in conduct which was in violation of the National Labor Relations Act, and had so been found guilty by an intermediate report of an agent of said Board, rendered after public hearing before such Board (R. 10, 11).

It was asserted that the conduct engaged in by the unions consisted of peaceful and truthful advertisment of the fact that the company's employees were not members of Bakery Sales Drivers' Union No. 344 (R. 14).

It was further alleged that in so far as any purported violations of Sections 111, 103.535 and 103.62 (3) were con-

cerned, such statutes were unconstitutional and void and violative of the Constitutions of the State of Wisconsin and the United States; that by virtue of the fact that the employer was engaged in interstate commerce, Chapters 111 and 103 of the Wisconsin Statutes were not applicable; and, finally, that the company did not come into a court of equity with clean hands, and, therefore, was not entitled to any relief (R. 14, 15).

After the trial of the case, which consisted cheifly of stipulation of certain undisputed facts, as above set forth, the trial court rendered its decision, in which it was held that the conduct of the unions was in violation of Section 111.06 (2), (a), (b) (e) and (f). Particular emphasis was placed upon the provisions of Section 111.06 (2) (e), and the construction of that section by the Supreme Court of the State of Wisconsin in the **Hotel & Restaurant Employees'** case (236 Wis. 329, 294 N. W. 632) (R. 20-23).

The Court further held that equitable jurisdiction of the Court may be immediately invoked, because there was no "labor dispute" between the parties as that term was defined in the statutes (R. 23).

The findings of fact filed by the Court related to claimed violations of the provisions of Section 111.06 of the Statutes, particularly Section 111.06 (2) (e), and the Court found as conclusions of law that the conduct of the unions constituted unfair labor practices as defined by Section 111.06 of the Statutes; that no labor dispute existed between the company and the unions as defined in Section 111.04 [the Court undoubtedly meant Section 111.02 (8) of the Statutes]; and that the provisions of Chapter 111 of the Statutes were ~~held~~ valid and constitutional enactments (R. 75, 80).

Judgment was entered accordingly, and provided as follows:

"It Is Hereby Adjudged and Decreed that the defendants, and each of them, their officers, agents, servants and employes, be and they are hereby enjoined and restrained:

"(1) From adopting means and engaging in conduct intended and reasonably calculated to coerce and intimidate plaintiff's employes while performing their usual and ordinary services for the plaintiff.

"(2) From following plaintiff's employes and delivery trucks while said trucks are being used to deliver bakery products to the plaintiff's customers.

"(3) From inciting or attempting to persuade persons not to deal with the plaintiff or the plaintiff's employes or with retail dealers offering plaintiff's products for sale.

"(4) From otherwise intentionally molesting, injuring or interfering with the plaintiff in its business" (R. 32, 33).

From this judgment the union appealed to the Wisconsin Supreme Court, which affirmed the judgment and denied a motion for rehearing.

STATEMENT AS TO JURISDICTION.

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U. S. C. A., Section 344-b, giving jurisdiction to this Court:

"to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by appeal any cause wherein a final judgment or decree has been rendered and passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of being repugnant to the Constitution or laws of the United States; or

where any title, right, privilege or immunity is specially set up or claimed by either party under the Constitution * * *."

This case is one in which the validity of the Statutes of the State of Wisconsin, to wit, Sections 111.01 through 111.19, Wisconsin Statutes 1939, particularly Sections 111.06 (2) (e) and 111.02 (8), and a judgment based thereon, is drawn in question upon the ground that such statutes and judgment are repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as depriving petitioners of liberty or property without due process of law, denying to the petitioners the equal protection of the laws and, more particularly, denying to the petitioners freedom of speech.

The decision of the Wisconsin Supreme Court was in favor of the validity of the statutes and the judgment.

This is also a case wherein the petitioners have especially set up and claimed rights, privileges and immunities under the Constitution of the United States, and such claim has been denied.

Said Supreme Court of the State of Wisconsin rendered its decision herein June 25, 1941, and in a second opinion, rendered on October 7, 1941, said Supreme Court denied a rehearing. Said opinion of the Supreme Court of the State of Wisconsin, the last resort in all causes in the State of Wisconsin, is officially reported in 238 Wis. 367.

Your petitioners argued before the Circuit Court for Milwaukee County and before the Supreme Court of the State of Wisconsin that the injunction issued by such Court and any statute upon which such injunction was purportedly based were unconstitutional and void and of no effect whatsoever, and contrary to the Fourteenth Amendment to the Constitution of the United States, in that such injunction and any statute upon which it is purportedly

based deprives the unions, their officers, members, and agents, from exercising the constitutional rights assured by Section 1 of the Fourteenth Amendment to the Constitution of the United States.[1]

The federal question of whether the Wisconsin Statutes in question or the judgment of the Court, whether based on such statutes or not, were violative of the Constitution of the United States thus was raised before every tribunal in which argument was heard. The Supreme Court of Wisconsin because of an equal division among the Justices of that Court affirmed the judgment appealed from under the Wisconsin rule, the Wisconsin Supreme Court thus adopting the holding of the Circuit Court for Milwaukee County that sections 111.06 (2) (e) and 111.02 (8) (the lower court mistakenly referred to section 111.04 as defining labor disputes), sections 111.06 (2) (a) (b) (e) and (f) were constitutional in so far as they were applicable to the facts in the instant case.

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1 Under the Wisconsin Supreme Court practice errors are assigned in the brief. In the brief of petitioners herein, appellants before the Wisconsin Supreme Court, under the title "Errors Assigned," the specific assignment of errors was as follows:

"The Circuit Court for Milwaukee County erred in restraining the defendants from engaging in the activities engaged in in the instant case for the reasons that:

"A. The Court was without jurisdiction to issue the same for the following reasons:

"(1) The subject matter of the action, relating to violation of Chapter 111, Wisconsin Statutes 1939, fell within the sole and exclusive jurisdiction of the Wisconsin Employment Relations Board.

"(2) The plaintiff had an adequate remedy at law.

"(3) The action taken and order entered by the National Labor Relations Board ousted the Court from jurisdiction.

"(4) The complainant did not come into court with clean hands.

"B. Such injunction and any statute upon which it is purportedly based are unconstitutional and void and of no effect whatsoever, and contrary to the Fourteenth Amendment to the Constitution of the United States and Article I of the Constitution of the State of Wisconsin, in that such injunction and the statutes upon which it is purportedly based deprive the unions, their officers, members and agents from exercising the constitutional rights of freedom of speech, press, and assemblage, guaranteed by the aforesaid Constitutions.

"C. The injunction is too broad, vague, and indefinite, and its issuance cannot be justified in law or by the facts in the instant case."

The decision of the Wisconsin Supreme Court, therefore, resulted in a determination of the federal question adversely to the petitioners and in favor of the validity of the statutes and judgment alleged by the petitioners to deprive them of the constitutional rights assured by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Some of the cases relied on in the courts below, and which the petitioners believe are in support of their position, and which will influence the decision of this Court, are as follows:

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736;
Carlson v. California, 310 U. S. 106, 60 S. Ct. 746;
Senn v. Tile Layers' Protective Union, 301 U. S. 468, 57 S. Ct. 857;
American Federation of Labor v. Swing, 312 U. S. 321, 61 S. Ct. 568;
Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc., 312 U. S. 287, 61 S. Ct. 552.

A copy of the printed record in this case used in the court below, in accordance with the rules and as certified to be true and correct by the Clerk of the Supreme Court of the State of Wisconsin, is hereby furnished, attached to, and made a part of this application in compliance with rule 38, paragraph 1, of the rules of this court.

STATUTES INVOLVED.

Section 11.02 (8), Wis. Stats. 1939:

"The term 'labor dispute' means any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute."

Section 111.06 (2), Wis. Stats. 1939:

"It shall be an unfair labor practice for an employe individually or in concert with others:

"(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in Section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

"(b) To coerce, intimidate or induce any employer to interfere with any of his employes in the enjoyment of their legal rights, including those guaranteed in Section 111.04, or to engage in any practice with regard to his employes which would constitute an unfair labor practice if undertaken by him on his own initiative.

* * * * * * *

"(e) To co-operate in engaging in, promoting or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

"(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance."

QUESTIONS PRESENTED.

The following federal questions, raised and argued before the Supreme Court of Wisconsin, are again brought forward here:

1. Is Wisconsin's so-called "Peace Act," particularly Section 111.06 (2) (e), prohibiting employees in a bar-

gaining unit from peaceful picketing or boycotting in connection with a strike, unless a majority in such unit have authorized the strike, void as contrary to the Fourteenth Amendment, depriving petitioners of the right to free speech and denying the equal protection of the laws?

2. Is an injunction valid which prohibits peaceful activities, unattended by violence, for the purpose of persuading employees who are not members of a labor organization to join and become members of such organization?

3. May a state, by confining its definition of the term "labor dispute" to a dispute between an employer and a majority of his employees thus limit the peaceful activities of labor organizations and members thereof, such as picketing and boycotting, and afford the basis for the issuance of an injunction by a court of equity on the ground that such peaceful activities are unlawful because of the absence of a labor dispute as so defined?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The affirmance of the judgment by the Supreme Court of the State of Wisconsin is in conflict with the decisions of this Honorable Court in **Thornhill v. Alabama**, 310 U. S. 88; **Carlson v. California**, 310 U. S. 106; **American Federation of Labor v. Swing**, 312 U. S. 321, and **Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc.**, 312 U. S. 287.

PRAYER FOR WRIT.

Wherefore, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of the State of Wisconsin, commanding that Court to certify and send to this Court for review and determination, on

a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 151 and entitled **Carpenter Baking Company, a Corporation, v. Bakery Sales Drivers Local Union No. 344 (A. F. of L.) et al.**, and that the judgment of the Supreme Court of the State of Wisconsin may be reviewed by this Honorable Court, and that your petitioners may have such other and further relief in thepremises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

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